

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DARRYL L TOLLIVER,	)	
	)	
Petitioner,	)	No C 07-5967 VRW (PR)
	)	
vs.	)	ORDER OF DISMISSAL
	)	
ROBERT A HOREL, et al,	)	(Doc # 2)
	)	
Respondent(s).	)	
_____	)	

Darryl L Tolliver, a prisoner at Folsom State Prison, has filed a pro se petition for a writ of habeas corpus challenging the conditions of confinement he encountered while incarcerated at Pelican Bay State Prison ("PBSP"). He also seeks leave to proceed in forma pauperis under 28 USC § 1915.

Good cause shown, Tolliver's application for leave to proceed in forma pauperis (doc # 2) is GRANTED. Tolliver's petition for a writ of habeas corpus is DISMISSED without prejudice to filing a civil rights complaint under 42 USC § 1983, however.

Although the Supreme Court has not addressed whether a challenge to a condition of confinement may be brought under habeas, see Bell v Wolfish, 441 US 520, 526 n6 (1979), the Ninth Circuit has held that habeas jurisdiction is

absent, and a § 1983 action proper, where, as here, a successful challenge to a prison condition will not necessarily shorten the prisoner's sentence. Ramirez v Galaza, 334 F3d 850, 859 (9th Cir 2003). In addition, the preferred practice in the Ninth Circuit has been that challenges to conditions of confinement be brought in a civil rights complaint. See Badea v Cox, 931 F2d 573, 574 (9th Cir 1991) (civil rights action is proper method of challenging conditions of confinement); Crawford v Bell, 599 F2d 890, 891-92 & n1 (9th Cir 1979) (affirming dismissal of habeas petition on basis that challenges to terms and conditions of confinement must be brought in civil rights complaint).

The clerk is instructed to enter judgment in accordance with this order, terminate all pending motions as moot and close the file.

SO ORDERED.



---

VAUGHN R WALKER  
United States District Chief Judge